

REMARKS

Reconsideration of the present application is respectfully requested.

Claims 1-10 stand rejected under 35 USC §102(e) over Ogiso. Applicants respectfully disagree since Ogiso neither teaches what the Office Action asserts nor what Applicants have claimed. In fact, it does not appear as if the Ogiso reference even includes the term "misfire", and certainly does not include that term as used in the context of Applicants' claimed invention. When, Applicants' claims are read consistent with Applicants' specification, as required by the MPEP, there is no proper interpretation of the term "misfire" that can be applied to a cylinder not receiving fuel. In other words, Applicants' claims require that the variable valve mechanism induce a misfire in a fueled cylinder. This is completely different from anything fairly shown or suggested by Ogiso, especially including the cited column and line numbers. Therefore, Applicants respectfully request that the outstanding rejections based upon Ogiso be withdrawn.

Even if one can fairly misinterpret Applicants' claims to read them onto something that is not even an induced misfire, as in Ogiso, Applicants have amended independent claim 1 to make it clear that the misfire is induced by the variable valve mechanism in an engine cycle in which that cylinder is receiving fuel. This amendment makes Applicants' intended meaning for the term "misfire" an explicit part of the claim itself, and therefore, the claims have not been narrowed. There should be no dispute that the fuel cut off strategy taught by Ogiso to avoid spoiling their catalytic after treatment devices is entirely different from what Applicants have claimed. Therefore, Applicants again respectfully request that that the outstanding rejections based upon Ogiso be withdrawn.

Applicants also respectfully assert that numerous features in the dependent claims are also not shown or suggested by Ogiso. But the Office Action merely brushes over these dependent claims without sufficient detail to even allow Applicants to rebut the outstanding rejections. Therefore, over and above the reasons set forth with regard to claim 1, Applicants respectfully request that the rejections against the dependent claims either be made more detailed so that Applicants can have a fair opportunity to rebut the same, or that the rejections should be withdrawn.

Claims 11-18 stand rejected under 35 USC §102(e) over Kumagai et al. As discussed in Applicants' previous response, Kumagai et al. can not be fairly characterized as teaching the inducement of a misfire, as that term is used by either those skilled in the art or as used in the context of Applicants' claimed invention. No one with ordinary skill in the art would interpret the term "misfire" to apply to a cylinder not receiving fuel, and it is unfair to misinterpret that term so

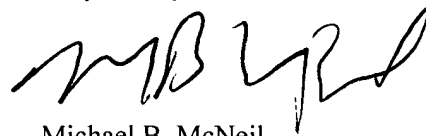
broadly as to apparently assign a completely contradictory meaning to the same. Therefore, Applicants respectfully must insist that some evidence be made of record to show that someone with ordinary skill in the art would interpret Applicants' claimed "misfire", in the same way apparently done by the Examiner, or the rejection should be withdrawn. Kumagi et al. flatly fails to teach the inducement of a misfire; instead it teaches cutting off fuel to a cylinder being manipulated by its variable valve mechanism.

In order to better prevent the Office Action from assigning an apparently contradictory meaning to the term "misfire", and to avoid further bickering over whether it is possible to read Applicants' claim language consistent with Applicants specification, as it must be, and also onto the Kumagi et al. reference, Applicants have now amended the claim to explicitly define the term misfire in the claim itself. Since the MPEP and relevant case law require that a §102 reference disclose exactly what an Applicant has claimed, and Kumagi et al. does not do this, Applicants respectfully request that all of the outstanding §102 rejections based upon Kumagi et al. be withdrawn.

Applicants also respectfully assert that many of the dependent claims include features not shown or suggested by Kumagi et al. But again, the Office Action provides absolutely no detail in these rejections that would enable Applicants to rebut anything. Therefore, Applicants are left to speculate. And the Office Action is further confusing because the rejections against claims 12-18 based upon Kumagi et al. refer to the discussions of the rejection against claim 1 based upon Ogiso. What is this supposed to mean?

This application is now believed to be in condition for allowance of claims 1-18. However, if the Examiner believes that some minor additional clarification would put this application in even better condition for allowance, the Examiner is invited to contact the undersigned attorney at (812) 333-5355 in order to hasten the prosecution of this application.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "MB McNeil", with a stylized flourish at the end.

Michael B. McNeil
Reg. No. 35,949